IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court No.2

Writ Petition No. 6459 of 2001 (S/S)
(Old No. 5326 of 1995)

1.State of U.P. through the Secretary
to Government, U.P., Home (Police)
Department, Sachivalaya, Lucknow,

2. The Director General of Police and
Inspector General of Police, Uttar Pradesh,
Lucknow,

3. The Deputy Inspector General of Police,
Garhwal Region, U.P., Pauri Garhwal,

4. The Superintendent of Police,
Dehradun, U.P.

..... Petitioners

Versus

1. Smt. Debu Bhandari daughter of Sri Man
Bahadur Bhandari, Ex. C.P. 203 Lady
Police Constable, resident of Giwain Sot,
Post Kotdwara, District Pauri Garhwal,

2. The State Public Services Tribunal,
U.P., Indira Bhawan, Lucknow.

..... Respondents

Date: 6th May, 2005.

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma,J

This petition has been filed by the petitioners seeking writ of certiorari to quash the impugned judgment and order dated 26.07.1995 passed by the respondent No.2-State Public Services Tribunal in Claim Petition

No.308/V/HM-3/1988 Smt.Debu Bhandari versus State of U.P. and others, contained in Annexure No. 1 to the writ petition by which the State Public Services Tribunal (hereinafter referred to as the Tribunal) was allowed the claim of the respondent No.1 and quashed the order of termination dated 20.05.1985 and order of rejection of the appeal dated 07.11.1985, 13.07.1987 and 13.09.1988. The Tribunal further directed the petitioners to reinstate the services of the respondent No.1 within three months treating her in continuous service and also awarded interest at the rate of 18% per annum.

2. The respondent No.1 preferred a claim petition No. 308/V/HM-3/1988 before the Tribunal against the orders impugned raising various grounds therein and prayed to declare the orders dated 20.5.1985, 07.11.1985 and 13.07.1987 passed by Opp.party/petitioners as illegal, inoperative, unsustainable, null and void and to quash the said orders as also to allow her revision dated 10.2.1986 filed before the authority concerned and to give consequential benefits of regular service to her. The respondent No.1 averred in her claim petition that she was appointed as Lady Police Constable in the Police Department on 21.11.1982 and after her getting successful completion of requisite training she was posted in District Pauri Garhwal and subsequently transferred to District Dehradun. Vide order dated 20.05.1985 passed by the Superintendent of Police, Dehradun the respondent No.1 was terminated from service from the date of receipt of the said order. Against the said order the respondent No.1 filed the appeal which was rejected, vide order dated 07.11.1985. The respondent No.1 preferred a revision against the said orders before the Director General of Police

as well as Inspector General of Police, U.P., Lucknow and the same was also rejected, vide order dated 13.07.1987. She also averred that several lady constables of her batch were still serving and her services were illegally terminated. She also raised ground that no departmental proceedings were ever initiated against her in terminating her services. The respondent No.1 further averred in her claim petition that her services have been terminated on account of alleged charge of misconduct and is penal in nature against which opportunity of show cause was not given and the order impugned was passed in violation of Article 311 of the Constitution of India and also in violation of provision made in Paras 486, 490, 493 and 541 of the U.P.Police Regulations and also in violation of principles of natural justice.

3. Before the Tribunal the petitioners filed their written statement controverting the facts and circumstances of the case of the respondent No.1. The petitioners averred in their written statement that the respondent No.1 was appointed on 21.11.1982 as Lady Police Constable on temporary basis and the termination order was passed in accordance with the rules. It was also averred that the order of appeal and revision has also been passed after due consideration and there was no illegality or infirmity in the said orders. Being the temporary employee the services of the respondent No.1 were terminated in accordance with the provisions of U.P. Temporary Government Servants (Termination of Service) Rules, 1975. The petitioners also averred before the Tribunal that the reason for termination of services of the respondent No.1 was not the illegal relationship with Sub Inspector R.K.Singh. The Tribunal after hearing the matter

allowed the claim of the respondent No.1 in an illegal and unjustified manner and passed the impugned order.

4. In writ petition the petitioners took the ground that the Tribunal committed a manifest error of law in holding that the order impugned of termination was passed in violation of principle of natural justice and the learned Tribunal has failed to consider in concluding the impugned judgment and order that the services of the respondent No.1 were temporary and the same has been terminated by an order of simplicitor, hence the impugned judgment is wholly illegal and bad in law.

5. In the counter affidavit filed by the respondent No.1 she denied all the allegations made by the petitioners and stated that it had been correctly found by the Tribunal that the termination order was penal in nature as the same had been passed on the basis of wrongly alleged misconduct of respondent No.1 and as such she was fully entitled to get the protection of Article 311 of the Constitution of India as well as provisions of Paras 486, 490, 493 and 541 of U.P. Police Regulations.

6. We have heard the learned Chief Standing Counsel for the petitioners and Sri T.S.Rautela, learned counsel for the respondent No.1 The sole question which falls for consideration in this petition is whether the order dated 20.05.1985 terminating the services of the respondent No.1 who was allegedly a temporary employee is vitiatede in law. The learned Chief Standing Counsel on behalf of the petitioners contended that the respondent No.1 was a temporary employee and, therefore, her services could be terminated at any time by giving her a month's notice in terms of U.P. Temporary Government Servants (Termination of Service) Rules, 1975. He further contended

that the learned Tribunal as an appellate/appointing authority, which power does not vests in it, passed the impugned judgment which is without jurisdiction and bad in law.

7. On the contrary, the learned counsel for the respondent No.1 contended that the order by which the services of the respondent No.1 were terminated was, in fact, punitive in nature. It is also contended that the respondent No.1 could not have been removed from service without holding a regular departmental inquiry. It is further contended that the courts including the State Public Services Tribunal have full jurisdiction to go behind the order to find out whether it was an order of termination simplicitor or it was an order passed by way of punishment. It is pointed out that this aspect of the matter was considered by the Tribunal which, on the basis of the facts set out in the reply filed on behalf of the opposite parties came to the conclusion that the order was punitive in nature. The learned counsel for the respondent No.1 placed reliance on the principle of law laid down by the Apex Court in the case **Chandra Prakash Shahi versus State of U.P. and Others,** reported in **(2000)5 Supreme Court Cases 152** in which in Paras 33 & 34 of the said judgment it has been held that;

> "33. Where, therefore, the services of a probationer are proposed to be terminated and a particular procedure is prescribed by the Regulations for that purpose, then the termination has to be brought about in that manner. The probationer Constable has to be informed of the grounds to explain his position. The reply is to be considered by the Superintendent of Police so that if the reply is found to be convincing, he may not be deprived of his services.
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> 34. If this procedure is followed and the services are terminated thereafter, it would not amount to a

punitive action. The rule being mandatory in nature, compliance therewith would not alter the nature of the order passed in two decisions, namely, *State of Orissa v. Ram Narayan Das (AIR 1961 SC 177) and Ranendra* Chandra Banerjee v. Union of India (AIR 1963 SC 1552) in terms of Rule 55-B of the Civil Services (Classification, Control & Appeal) Rules, which in all respects, is akin to para 541 of the U.P. Police Regulations quoted above. The relevant portion of Rule 55-B which was extracted in the case of *State of Orissa v. Ram Narayuan Das (supra) is quoted below:*

> "Where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the employment."

8. In the said case Chandra Prakash Shai (supra), the order of termination was challenged by applicant before the U.P. Public Services Tribunal. The Tribunal set aside the termination order and allowed the claim petition. Against the said order in a writ petition filed by the State, the High Court set aside the order of Tribunal. In the appeal filed by the applicant/respondent, the Apex Court allowed the same and restored the order passed by the U.P. Public Services Tribunal.

9. In the case before hand, there has been total non-compliance with the provisions of Para 541 of the U.P. Police Regulations and services of the respondent No.1 were terminated without issuing her any notice intimating the grounds on which her services were proposed to be terminated nor her explanation was obtained. The facts of the aforesaid cited case are similar to the facts of the present case and we are bound to abide the said principle

of law. The services of the respondent No.1 were terminated because she was found involved in illicit relationship with Sub Inspector R.K. Singh of the Police Department. It is also made clear that the respondent No.1 has set up a case before the Tribunal that her marriage was solemnized under the Special Marriage Act, 1954 and this fact was clearly brought to the notice of the appellate authority in her supplementary appeal filed on 19.6.1985. In her counter affidavit filed by the respondent No.1 in the writ petition as also in her rejoinder affidavit (Annexure No.CA-I to the writ petition) filed before the Tribunal, the applicant/respondent No.1 rebutted the plea taken by the petitioners that the marriage of respondent No.1 was not solemnized with Sub Inspector R.K. Singh and she had illicit relations with Sub Inspector R.K. Singh.

10. For the reasons stated above, we do not find any illegality or infirmity in the order passed by the Tribunal and we are of the opinion that the termination order dated 20.5.1985 of respondent No.1 on the ground of alleged misconduct and subsequent orders passed by the Opp.party/petitioners in the appeals filed by the applicant/ respondent No.1 were set aside by the Tribunal on the right prospect of law.

11. The writ petition has no force and is dismissed. No order as to costs.

(P.C. Verma,J.)

(B.S. Verma,J.)

06.05.2005
P.Singh